

# ARKANSAS SUPREME COURT

No. CR 06-1280

NOT DESIGNATED FOR PUBLICATION

MICHAEL A. DAVIS  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered      December 7, 2006

*PRO SE* MOTION FOR BELATED  
APPEAL OF ORDER AND PETITION  
FOR WRIT OF *CERTIORARI* TO  
COMPLETE THE RECORD [CIRCUIT  
COURT OF PULASKI COUNTY, CR  
98-28, HON. JOHN LANGSTON,  
JUDGE]

MOTION DENIED; PETITION MOOT.

## PER CURIAM

In 1998, petitioner Michael A. Davis was found guilty of aggravated robbery, kidnapping, and theft of property and sentenced as a habitual offender to consecutive terms of imprisonment of thirty years, life, and ten years. We affirmed. *Davis v. State*, CR 98-1180 (Ark. April 13, 2000).

On March 29, 2006, petitioner filed in the trial court a *pro se* petition for writ of *habeas corpus* pursuant to Act 2250 of 2005, codified at Ark. Code Ann. §§16-112-201–07 (Repl. 2006).<sup>1</sup> The petition was denied by order entered July 7, 2006. Petitioner filed a *pro se* notice of appeal from the order on August 9, 2006. When the record on appeal was tendered here, our clerk correctly declined to lodge it because the notice of appeal was not timely filed within thirty days of the date the order was entered as required by Ark. R. App. P.--Civ. 4(a).

Petitioner now seeks leave to proceed in this court with a belated appeal of the order. He also

---

<sup>1</sup>The act, which had an effective date of August 12, 2005, amended Act 1780 of 2001.

seeks a writ of *certiorari* to complete the record.

A petitioner has the right to appeal a ruling on a petition for postconviction relief, which includes the denial of a petition for writ of *habeas corpus*. See *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). With that right goes the responsibility to file a timely notice of appeal within thirty days of the date the order was entered. If a petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*).

Petitioner here asserts that the notice of appeal filed August 9, 2006, was timely, and bases his request to proceed with the appeal solely on the contention that the record was not tendered to our clerk in a timely fashion. The tender of the record, however, is not at issue as the notice of appeal was clearly not timely filed with the circuit clerk.

As noted, the rule governing the filing of notices of appeal allows a period of thirty days to file a notice of appeal from the date the order was entered-of-record. The order in the instant matter was entered on July 7, 2006, and petitioner filed the notice of appeal thirty-three days later on Wednesday, August 9, 2006. The thirtieth day to file the notice fell on a Sunday, making the final day to file the notice Monday, August 7, 2006. As petitioner has failed to show good cause for the failure to file a notice of appeal by that date, the motion for belated appeal is denied. The writ of *certiorari* is moot.

Motion denied; petition for writ of *certiorari* moot.